S.B.CIVIL EXECUTION SECOND APPEAL NO.1/2005

Amarlal.
vs.
Smt. Suraj Devi

DATE OF JUDGMENT ::: 20.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi. for the appellant.

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Heard learned counsel for the appellant.

The facts relating to the present controversy are that according to the plaintiff-landlord, the suit property was let out to one Ram Chandra in the year 1970 particularly on 23.1.1970 and rent deed was executed on 11.9.1971. The rent was paid by the tenant upto 31.12.1981. The landlord served a notice to the tenant on 12.1.1989 and sought his eviction on the ground of sub-letting of the suit property. The suit was decreed by the trial court on 23.9.1999.

According to the appellant, when the appellant came to know about the decree passed for the suit premises, he submitted objection petition under Order 21 Rule 97 CPC and alleged that the appellant is not sub-tenant of the original tenant but he is in occupation in his own right and he became owner by adverse possession.

According to learned counsel for the appellant, the

appellant is not bound by the decree and the courts below influenced by the finding recorded in the civil original suit about subletting of the property by the alleged original tenant to the appellant dismissed the appellant's objection petition. It is also submitted that the landlord failed to prove that the rent was paid even by the appellant alleged sub-lettee to the alleged tenant in chief of the plaintiff landlord. The appellant is in admitted possession of the suit property. In view of the above, the courts below committed serious error in dismissing the appellant's objection petition.

It is also submitted that the courts below did not consider the evidence of the appellant properly and the courts below have not discarded the evidence of the appellant and his witnesses. No finding has been recorded by the courts below about the credibility of the appellant and his witnesses. The courts below dismissed the objection petition on the ground that there is no rebuttal of the finding recorded in the original suit in which the decree was passed by the trial court ignoring the fact that the appellant was not party in that suit.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the courts below.

It appears from the judgment of the first appellate court itself that the first appellate court considered the statement of PW1 Amar Lal and pointed out several serious contradictions and also pointed out the improbabilities

from the statement of the appellant. The facts mentioned in the judgment itself are sufficient to indicate about the credibility of the objector. In view of the above fact itself, it is not a case where the courts below have not considered the evidence of any of the parties.

So far as possession is concerned, if the appellant is sub-lettee, his possession is not disputed but being a sub-lettee, he is bound by the decree.

So far as facts about the evidence of the appellant himself in the judgment is concerned, the same is sufficient in reaching to the conclusion that no case is made out for allowing the objection petition as the appellant failed to establish his right, title or interest otherwise than in the manner on the grounds on which the suit was decreed.

In view of the above, I do not find any force in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya